IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 49 of 2005
Decided on 29.10.2007

Ram Lal .....Appellant

Versus

State of H.P. ..... Respondent

Coram:

The Hon'ble Mr. Justice Surjit Singh.J.

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?[1] *.No.*

For the appellant : **Mr. M. S. Guleria, Advocate.**

For the Respondent **Mr. Som Dutt Vasudeva, Additional Advocate General.**

Surinder Singh, J.

The appellant herein has assailed the judgment of conviction and sentence passed against him, under section 302 read with Section 34 of the Indian Penal Code, allegedly for causing death of Gianu.

In nut shell the prosecution case has been that on 2.2.2003 Krishan Chand (PW) was working in his fields, adjacent to the crematorium at Bhaur. At about 11.30 a.m., he noticed two male persons

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes.***

and one woman quarreling with each other. All were from 'Bengali community'. Out of them one man and woman were residing in the ***Kansa Khad*** crematorium for the last about 10 days. When Krishan Chand aforesaid had left his field, he found that all the three persons had continued quarreling but he could not understand their language, therefore, he did not know the reason for such an altercation which took place between them.

Around 2.30 p.m. one Mathura Devi (PW) w/o Roshan Lal r/o Bhaur, and Guddi (PW) of the same village met the complainant Krishan Chand near his house and told him that the man and woman who were residing in crematorium had killed a person, whose dead body was lying there. Krishan Chand aforesaid informed Member Panchayat Smt. Sheela Devi and her husband Dhani Ram and requested them to further inform the police. He himself went to the crematorium. On reaching there, he saw the dead body of a male person in the crematorium. The appellant and his lady co-accused were sitting nearby; the blood was oozing from the mouth of the dead body. On hearing the murder of a person, Jagdish, Nek Ram and many other persons of the village gathered there, as a result of which, the

appellant and his co-accused could not flee away from the spot. Police was informed and it came to the spot. Statement (Ex.PW15/A) of the complainant was recorded, on the basis of which FIR Ex.PW-12/A was registered. Police prepared the inquest report (Ex.PW-15/B), site plan (Ex.PW 15/D) and took the photographs Ex.PW-15/C-1 to Ex.PW-15/C-11.

Autopsy of the dead body was got done from (PW5) Doctor H.K.Abrol, Sub Divisional Hospital, Sundernagar, District Mandi. He found the following injuries on the dead body:

1. Linear abrasion of size 2cm x 1cm on left parietal region of scalp, clotted blood present;
2. Linear abrasion with blackish scab on sagital suture of scalp;
3. A.M. Lacerated wound size 2" x ½" mucosa deep upper lip left side.
4. Ante mortem big abrasion size 10" x 8" on sacral region skin around this can be easily peeled off.

The Doctor found the mouth of dead body closed having blood stained fluid. Two metallic ***ghuangroo-***beads were found in the mouth of the deceased. The case was referred to the Forensic

Expert, Zonal Hospital Mandi, for opinion regarding cause of death.

The viscera of the dead body was preserved and handed over the police. The post mortem report (Ex.PW5/A) was prepared.

On further examining the dead body, regarding the cause of death, in the Zonal Hospital, Mandi, the Medical Officer (PW-9) found that the injuries on the dead body were ante-mortem. In addition to these injuries, there was a big contusion in the scalp in the left frontal parietal region going up to temporal region, which was ante mortem in nature. The skull was already separated. Brain tissues were found normal. According to the Doctor, there was a lot of fluid blood in the posterior cranial fosse with hairline fracture of base of the skull near foramen magnum in posterior aspect towards left side with fresh blood coming out of the fractured line. On further exploring the injuries, the final opinion was reserved. The report of the Doctor is Ex.PW-9/A.

On receipt of the Chemical Examiner report (Ex.PW-9/B), it was opined that the deceased had died on account of head injury. He was found intoxicated with alcohol. According to the Doctor,

the injury on the head could be caused by a danda Ex.P-1 which was found nearby in the crematorium.

After completing the investigation, the case was presented in the court for trial under the aforesaid sections, against the appellant and his co-accused. They pleaded not guilty and claimed trial to the charge.

To prove its case, prosecution has examined 15 witnesses in all. The accused were also examined under section 313 of the Code of Criminal procedure. They denied the attendant circumstances put to them. They alleged false implication in this case on account of conspiracy and maintained their innocence.

The accused persons were called upon to enter the defence but no defence was led.

After hearing the learned counsel for the parties and upon going through the evidence on record, the learned trial acquitted accused Satya but held appellant Ram Lal guilty for causing the death of the Shri Gianu. Accordingly, he was convicted and sentenced for life and to pay a fine of Rs.10,000/- under section 302 of the Indian Penal Code. The appellant has assailed his conviction and sentence in this appeal.

We have heard Shri M.S.Guleria, learned counsel for the appellant and Shri Som Dutt Vasudeva, learned Additional Advocate General, for the respondent and have carefully reappraised the evidence on record.

It is pertinent to note here that the complainant Krishan Chand (PW1) had noticed that the appellant including his co-accused and the deceased were present in *Kansa khad* crematorium. After about fifteen minutes when he returned home, he saw that a scuffle was going between the appellant and deceased. At about 3.00 p.m. Drumpti Devi, Mathura Devi and Dharma Devi met him (PW1) near his house and disclosed that one person was killed in the crematorium and his dead body was lying there. Thereafter, he went there and found the dead body of one person. The blood was oozing from his mouth. He has further deposed that the appellant and his lady co-accused were sitting nearby the dead body. In the cross-examination, he has admitted that when he reached the crematorium he saw that the deceased was in the lap of the appellant. The said witness did not know as to who had killed Gianu, aforesaid but he was informed by the ladies, who were washing the clothes in the

khud, that the appellant had killed said Gianu (deceased). Out of the aforesaid ladies Drumpti Devi, Dharma Devi and Guddi were examined. According to Drumpti Devi (PW3), she had heard from the children that *Bengali* living in the crematorium had killed some body.

Smt. Dharama Devi PW-4 did not support the prosecution case, as such, she was declared hostile.

Smt. Guddi (PW8) deposed that on her way back to home when she was sitting in a shop, a boy of the village came to her and told about the alleged incident involving the appellant.

Thus, none of the above witnesses, are the witnesses of the alleged occurrence and none was examined who had actually seen the appellant committing murder of the deceased.

Further, Raj (PW6) has deposed that the deceased was his elder brother. When he returned to his home, after collecting the waste material, he was told that his brother was finished by the appellant at Bhor crematorium, but who told him about the incident is not known.

On the critical examination of the above evidence, we find that the prosecution has

miserably failed to prove the case against the appellant beyond a shadow of reasonable doubt, the benefit of which has to go to the accused. On reappraising the prosecution evidence, we are of the view that the trial court findings of guilt, returned against the appellant, are unsustainable. Consequently, the impugned judgment of conviction and sentence is set aside.

The appellant is acquitted of the offence charged. He be released forthwith, if his detention is not required in any other case. Registry to take follow up action forthwith.

The appeal stands disposed of accordingly.

(Surjit Singh),J.

October 29,2007 (Surinder Singh),J.
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